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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ANGELO DENNINGS, et al.,

11 Plaintiffs,

12 v.

13 CLEARWIRE CORPORATION,

14 Defendant.

CASE NO. C10-1859JLR

ORDER DENYING MOTION TO  
CONTINUE

15 Before the court is attorney Christopher Bandas' Motion to Continue Show Cause  
16 Hearing. (Mot. (Dkt. # 159).) The court has ordered Mr. Bandas to appear and show  
17 cause why he and his clients should not be sanctioned for disobeying a court order to post  
18 an appeal bond. (7/19/13 Order (Dkt. # 154).) Mr. Bandas now asks the court for a  
19 continuance of his show cause hearing. (*Id.*) He argues that, because this is a criminal  
20 contempt hearing, he is entitled to due process protections that, to date, he has not been  
21 afforded. (*Id.* at 1.)  
22

1 Mr. Bandas is mistaken. This is not a criminal contempt proceeding, nor is it a  
2 civil contempt proceeding. The court is at a loss to understand why Mr. Bandas believes  
3 it is. The word “contempt” does not appear a single time in either the court’s Order to  
4 Appear and Show Cause (*see* 7/19/13 Order) or the court’s more recent order providing  
5 specific notice of the basis for possible sanctions (*see* 7/30/13 Order (Dkt. # 158)).  
6 Instead, the court’s order providing notice spelled out, in no uncertain terms, that the  
7 basis for sanctions was the court’s inherent sanctioning authority, not its contempt  
8 authority. (*See id.*)

9 Holding someone in contempt is not the same as imposing sanctions:

10 We recognize that there are significant differences between the  
11 imposition of sanctions and the punishment of criminal contempt. “The  
12 court’s power to impose appropriate sanctions on attorneys practicing  
13 before it ‘springs from a different source than does the power to punish for  
14 criminal contempt.’” *Kleiner v. First National Bank of Atlanta*, 751 F.2d  
15 1193, 1209 (11th Cir. 1985) [“internal citation omitted”]. Although the  
16 power of a court to punish for contempt may be “inherent,” *see Ex Parte*  
17 *Robinson*, 86 U.S. (19 Wall.) 505, 510, 22 L.Ed. 205 (1873), the power of a  
18 United States court today to impose criminal penalties for contempt of  
19 court is provided by criminal statutes. *See* 18 U.S.C. §§ 401, 402.

20 The power to impose sanctions on attorneys is either rooted in the  
21 courts’ “inherent power to protect the orderly administration of justice and  
22 to preserve the dignity of the tribunal,” *Kleiner*, 751 F.2d at 1209, or  
provided by statutes and rules designated to implement the power. *See*,  
*e.g.*, Fed. R. Civ. P. 11 (sanctions in connection with papers presented to  
the court); *Eisenberg v. University of New Mexico*, 936 F.2d 1131, 1136-37  
(10th Cir. 1991) (finding Fed. R. Crim. P. 42 inapplicable to Rule 11  
monetary sanctions); *Donaldson v. Clark*, 819 F.2d 1551, 1558-59 (11th  
Cir. 1987) (en banc) (same); *Warshay v. Guinness PLC*, 750 F. Supp. 628,  
640 (S.D.N.Y. 1990) (same), *aff’d*, 935 F.2d 1278 (2d Cir. 1991) (table);  
Fed.R.Civ.P. 37 (sanctions in connection with discovery); 28 U.S.C. § 1927  
(attorneys’ liability for expenses of vexatious litigation).

Moreover, the consequences of an adjudication of criminal contempt are

1 different from those flowing from the imposition of sanctions. The person  
2 found guilty of criminal contempt, unlike a person on whom sanctions have  
3 been imposed, now carries a criminal conviction on his record.  
Furthermore, possible punishments for contempt, unlike sanctions, include  
imprisonment.

4 *Mackler Prods., Inc. v. Cohen*, 146 F.3d 126, 129 (2d Cir. 1998).

5 Mr. Bandas takes the position that the court's notice to counsel regarding the basis  
6 for sanctions converted this from a civil contempt proceeding to a criminal contempt  
7 proceeding. (*See* Mot. at 3.) It did no such thing. As discussed above, this is not a  
8 contempt proceeding at all. Nor did the court's notice convert it into one. This is a  
9 sanctions hearing, as was clearly spelled out in the court's order providing notice.

10 (7/30/13 Order.) The law that applies to this case is the law of sanctions under the court's  
11 inherent authority, not the law of contempt. Thus, most of Mr. Bandas' arguments in this  
12 motion are irrelevant because they are all directed to distinguishing between different  
13 forms of contempt and discerning the legal consequences of that distinction.

14 However, Mr. Bandas raises one argument that merits consideration. He argues  
15 that the court must provide him with due process protections above and beyond those the  
16 court is already providing. (Mot. at 6-7.) He argues that other courts, in similar cases,  
17 have provided greater protections to parties or attorneys being sanctioned given the  
18 punitive nature of sanctions that may be imposed under the court's inherent authority.  
19 (*Id.*) These protections include the right to an evidentiary hearing, the right to conduct an  
20 investigation, and access to compulsory process. (*Id.* at 6-8.) Mr. Bandas argues that this  
21 court should follow those courts' lead and give Mr. Bandas additional opportunities to  
22 present evidence and argue his case.

1 The court has already spelled out what it believes due process requires in this  
2 situation and has endeavored to provide that process. (*See* 7/30/13 Order.) Nevertheless,  
3 out of an abundance of caution and respect for the commands of due process, *see*  
4 *Mackler*, 146 F.3d at 130 (“[S]anctions and contempts raise certain similar concerns.  
5 Whether or not a finding of contempt is involved, unfairness and abuse are possible,  
6 especially if courts were to operate without any framework of rules or cap on their power  
7 to punish.”), the court will permit Mr. Bandas the following additional procedural  
8 protections and opportunities to be heard:

9 (1) Mr. Bandas may present evidence at the show cause hearing on August 1, 2013.

10 (2) Mr. Bandas may submit additional briefing, after the hearing, on the issue of  
11 sanctions and may attach evidence to that briefing. The court will consider the  
12 attached evidence before deciding whether to impose sanctions. The briefing will  
13 be limited to ten pages, but the court will not impose a page limit on the attached  
14 evidence.

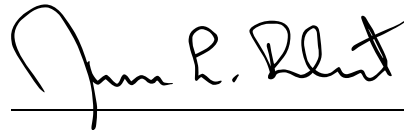
15 (3) Mr. Bandas will be given additional time to conduct an investigation before  
16 submitting briefing. The court will allow Mr. Bandas ten days in which to gather  
17 evidence. As such, the briefing with attached evidence will be due August 13,  
18 2013. If Mr. Bandas requires more time to gather evidence, he may request  
19 additional time, but he must make this request by formal motion and must provide  
20 the court with specific and legitimate reasons why more time is necessary.

21 (4) If, for any reason, Mr. Bandas requires compulsory process to conduct his  
22 investigation, he may request the court’s permission to use compulsory process.

1 Again, he must do so by formal motion and must provide specific and legitimate  
2 reasons why the particular information sought to be obtained is necessary and why  
3 substantially equivalent evidence cannot be obtained without the use of  
4 compulsory process.

5 In light of the above, the court DENIES Mr. Bandas' motion to continue (Dkt.  
6 # 159). The sanctions hearing will take place on August 1, 2013, as scheduled.

7 Dated this 31st day of July, 2013.

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10 JAMES L. ROBART  
11 United States District Judge  
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